IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2268 OF 2004

Dilip S/o Pandit Ujagare ..Petitioner.

Versus.

Bharat Petroleum Corpn.Ltd & ors ..Respondent.

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Mr.R.D.Soni i/b Ram & Co for Petitioner

Mr.Y.R.Mishra with Mr.Y.S.Bhate for Respondent

CORAM: A.P.SHAH AND
S.U.KAMDAR, JJ

DATE : 28TH SEPTEMBER, 2004

O**RAL JUDGMENT (Per S.U.Kamdar, J)**

1. By the present petition, the petitioner is challenging the order dated 3rd January, 2004 passed by the Appellate Authority of the respondent no. 1 Corporation. The appeal preferred by the petitioner against the order of the Disciplinary Authority dated 18th November, 2002 came to be rejected by the said impugned order.

. Some of the facts of the present case briefly stated are as under:

2. The petitioner was appointed with the respondent- Corporation on 6th April, 1987 as an officer trainee in the Engineering and Project

Department at Bombay. In July, 1988, the petitioner was transferred to Jabalpur. The petitioner was further subsequently transferred to the office of the 1st respondent at Solapur. On 18th November, 1992 the petitioner was suspended from service. The allegations against the petitioner were that of misappropriation. A criminal complaint was filed against the petitioner in the Court of the Chief Judicial Magistrate under section 406, 411 r/w 34 IPC for theft of metal steel plates and metal steel scrap.

3. A departmental enquiry was initiated against the petitioner on 15th December, 1992 for the same charges. On 25th May, 1995 a report was submitted by the Enquiry Officer holding that charges nos. 1,4,6, 7 and 8 against the petitioner are proved. On 24th August, 1995 the Chairman and Managing Director being the Disciplinary Authority after hearing the petitioner passed an order of temporary reinstatement on the ground that no disciplinary action should be initiated till the criminal proceedings on identical charges are concluded. The disciplinary authority thus kept the award of punishment in abeyance. Subsequent to his reinstatement, the petitioner was once again transferred to Jabalpur, M.P. However, the

petitioner was informed that the benefits which are claimed by him are kept in abeyance till the criminal case pending against the petitioner is decided and disciplinary proceedings are concluded.

4. On 1st June, 2000 the Chief Judicial Magistrate Solapur exonerated the petitioner of all the charges and acquitted him. The petitioner thereafter made a representation to the Executive Director who is the Disciplinary Authority to exonerate him also from the charges in the departmental enquiry in view of his acquittal in the criminal proceedings. Contention of the petitioner was that the punishment which was kept in abeyance till the complaint was decided by the criminal court should be decided in favour of the petitioner since he is acquitted in criminal trial. However, by an order dated 18th November, 2002 the authorities inflicted punishment on the petitioner of reduction in basic pay by one stage with immediate effect.

5. Being aggrieved by the said order dated 18th November 2002, the petitioner preferred an appeal and since the appeal was not decided bythe appellate authority, the petitioner filed a Writ Petition in this Court being Writ Petition No. 7425 of 2003. By an order dated 13th November, 2003 a Division

Bench of this Court directed the Appellate Authority to decide the appeal within a period of three months after affording a personal hearing to the petitioner. Accordingly, on 3rd January, 2004 the Appellate Authority decided the appeal and rejected the same. Thus, the punishment awarded by the Disciplinary Authority under an order dated 18th November, 2002 was upheld. This order of the Appellate Authority dated 3rd January, 2004 is the subject matter of challenge in the present Writ Petition.

6. The learned counsel for the petitioner has fairly conceded that mere acquittal in criminal trial need not result in exoneration of the petitioner from departmental proceedings. However, he contended that the appellate authority has exceeded its jurisdiction in as much as not only the order passed by the Disciplinary Authority has been confirmed but, other benefits which petitioner is entitled in law have also been rejected. It is his case that the said benefits were not the subject matter of order passed by the Disciplinary Authority and therefore the Appellate Authority could not get the jurisdiction to determine these various entitlements of the petitioners. On the other hand, the learned counsel appearing for the respondents

has contended that it is the petitioner who had sought all these prayers in his appeal and therefore the Appellate Authority was required to go into it and pass appropriate orders. He however fairly conceded that in fact all these benefits are required to be considered by the relevant authorities empowered to do so under the rules and regulations of the 1st respondent Corporation.

7. In the light of the aforesaid contentions of the parties, we are of the opinion that the Appellate Authority has exceeded its jurisdiction while considering the order passed by the Disciplinary Authority. From a reading of the order of the Disciplinary Authority, it is very clear that the only punishment inflicted on the petitioner is reduction in basic pay by one stage with immediate effect. Other benefits of the petitioner are not disturbed. However, the Appellate Authority in the impugned order has considered the other benefits of the petitioner also and rejected the same. In view of the fact that these items do not form part of the order passed by the Disciplinary Authority in our view, the Appellate Authority had no jurisdiction to go into all these aspects of the matter.

8. In the aforesaid circumstances, we partly allow

the present writ petition and partly quash and set aside the order passed by the Appellate Authority dated 3rd January 2004. While we uphold the order of the Appellate Authority in so far as the punishment pertaining to reduction in basic pay by one stage is concerned, we set aside the order of the Appellate Authority in so far as it deals with other benefits which the petitioner may be entitled to under the rules and regulations of the 1st respondent Corporation.

9. Accordingly, we allow the petition in part and we direct that concerned authorities under rules should consider the benefits claimed by the petitioner. The authorities shall consider the same in accordance with law and on its own merits in accordance with rules of respondent no. 1. We dispose of this petition with the aforesaid directions. However, there shall be no order as to costs.

A.P.SHAH, J

S.U.KAMDAR, J